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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,493	08/06/2003	George Edwin Martin		7056

7590 08/12/2005  
George E. Martin  
10712 Green Lake Trail  
Chisago City, MN 55013

EXAMINER
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COHEN, AMY R

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/634,493

Applicant(s)

MARTIN, GEORGE EDWIN

Examiner

Amy R. Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 and 7 are objected to because of the following informalities:

Claim 1, line 2 "to form cradle" should read --to form a cradle--.

Claim 7, "3/16<sup>th</sup>" needs a unit of measurement.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoover et al. (U. S. Patent No. 5,526,575).

Hoover et al. teaches a fish measuring device (Fig. 1), which has an elongated base (10) presenting a fish support surface (16) with two sides (32) and one end (18, 34) to form a cradle (Figs. 1-3).

Hoover et al. teaches the fish measuring device comprising a handle (20, 26) at one end.

4. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Keefe (U. S. Patent No. 5,339,532).

O'Keefe teaches a fish measuring device (Fig. 1) which has an elongated base (12) presenting a fish support surface (12) with two sides (22) and one end (16, 20) to form a cradle (Figs. 1-3).

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O'Keefe teaches the fish measuring device that has a hollow body formed of a moldable polystyrene, polypropylene, butyrate and is environmentally safe (Col 5, lines 54-60).

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ondusko (U. S. Patent No. 6,594,939).

Ondusko teaches a fish measuring device (1) which has an elongated base (2) presenting a fish support surface (2) with two sides (19, 20) and one end to form a cradle (Figs. 1 and 2).

Ondusko teaches the fish measuring device having two rulers, one in inches and the other in centimeters (Col 3, lines 51-62).

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoover et al. in view of Regnard (French Application No. 2,510,740).

Hoover et al. discloses the fish measuring device as described above in paragraph 3.

Hoover et al. does not disclose the fish measuring device having sides that graduate from 2 ½ inches high to 5 inches high.

Regnard discloses a fish measuring device having sides that graduate from one height to another height (Figs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sides of Hoover et al. to be graduated from one height to another, as

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taught by Regnard, in order to better hold the fish while measuring since the graduated sides would keep the fish from slipping over a side edge.

Regarding the height of the sides of the fish measuring device: Hoover et al. and Regnard disclose a fish measuring device having a graduated height (Regnard, Figs. 1-3) but do not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a graduated height of 2 ½ inches to 5 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the “optimum range” involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fish measuring device to be of 2 ½ inches to 5 inches in height in order to accommodate average sized fishes.

8. Claims 5-7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over O’Keefe.

O’Keefe discloses the fish measuring device as described above in paragraph 4, wherein the fish measuring device may be of a length, a width, a thickness, and color coded (Col 4, lines 33-52 and Col 5, lines 4-42).

O’Keefe does not specifically disclose the fish measuring device having a width of 5 inches to 6 inches; lengths of 20 inches and 30 inches; has a thickness of 3/16<sup>th</sup> inches; and that can be purchased in 20 inch length which is yellow in color or a 30 inch length which is red in color.

Regarding the width of the fish measuring device: O’Keefe discloses a fish measuring device having a width (W) but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a width of 5 inches to 6 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the “optimum range” involves

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only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fish measuring device to be of 5 inches to 6 inches in width in order to accommodate average sized fishes (O'Keefe, Col 4, lines 33-52 and Col 5, lines 4-42).

Regarding the lengths of the fish measuring device: O'Keefe discloses a fish measuring device having a length but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a length of 20 inches or 30 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fish measuring device to be of 20 inches or 30 inches in length in order to accommodate average sized fishes (O'Keefe, Col 4, lines 33-52 and Col 5, lines 4-42).

Regarding the thickness of the fish measuring device: O'Keefe discloses a fish measuring device having a thickness but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a fish measuring device having a thickness of  $3/16^{\text{th}}$  inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the thickness be  $3/16^{\text{th}}$  inches since this would be both a lightweight and moldable material.

Regarding the color-coding, O'Keefe discloses that color-coding the fish measuring device eases in using the device since each color would be recognizable for a length or species of fish (Col 5, lines 18-42). Therefore, it would have been obvious to one of ordinary skill in the art

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at the time the invention was made to have the 20 inch length yellow in color and/or the 30 inch length red in color in order to easily distinguish the length or species of fish.

### *Response to Arguments*

9. Applicant's arguments filed June 11, 2005 have been fully considered but they are not persuasive.

Regarding Applicant's argument that the handle (20, 26) is not in fact a handle, is not persuasive since Applicant does not claim any structure regarding the handle. The fish measuring device of Hoover et al. may be carried and hung by structure 20, 26, therefore, it is considered to be a handle.

Regarding Applicant's argument based on length of the Hoover et al. patent, Applicant is directed to paragraph 8 of this Office Action in which is found the rejection of claims 6 and 9 regarding the length of a fish measuring device.

Regarding Applicant's arguments based on units of measure, Applicant is directed to paragraph 5 above which states that Ondusko teaches the fish measuring device having two rulers, one in inches and the other in centimeters (Col 3, lines 51-62).

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents teach fish measuring devices Pieczynski (U. S. Patent NO. 6,901,674), Gray (U. S. Patent No. 6,765,155), Hargrove (U. S. Patent No. 5,944,596), and Storey et al. (U. S. Des. No. 348,405).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC  
August 10, 2005



Christopher Fulton  
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